



11 FEB 10 P2:19

STATE PROCUREMENT OFFICE
EMERGENCY PROCUREMENT REQUEST

STATE PROCUREMENT OFFICE
STATE OF HAWAII

1. TO: Chief Procurement Officer

DOD

2. FROM: Yale Alama Facility Operations Manager

Department/Division/Agency

Pursuant to §103D-307, HRS, and Subchapter 10, Chapter 3-122, HAR, the Department requests approval for the following:

3. Date 09 Feb 2011

4. After the fact ☐ YES ☒ NO

5. Nature of the Emergency

B46 Central HVAC Compressor is INOP putting entire system down. There is a full staff of 25 and this weekend is a drill to which there will be almost 200 soldiers going through that facility which houses our MEDCOM unit. These soldiers will be doing medical review because they have just returned from Afghanistan.

6. Vendor: Oahu AC

Address: 938 Kohou Street P.O. Box 1701
Honolulu, HI 96817

7. Price:

\$10718.00

8. Description of goods, services, or construction to be purchased

Replacement and disposal of 1 each compressor to bring system back to operation.

9. Reason for Vendor Selection

Oahu Does the preventive maintenance for HIARNG and discovered the problem during monthly service.

10. Direct questions to: Yale Alama

Phone: 672-1544

11. I certify that the information provided above is to the best of my knowledge, true and correct.

FEB 09 2011

Department Head

Date

Reserved for SPO Use Only

12. Chief Procurement Officer's comments:

SEE CPO COMMENTS ATTACHED AS PAGE 4.

13.

☐ APPROVED ☐ DISAPPROVED ☒ NO ACTION REQUIRED

2/11/2011
Chief Procurement Officer Date

14. E.P.No. 11-017-C

OAHU AIR CONDITIONING SERVICE, INC.

We service and repair all makes and models

938 Kohou St., P.O. Box 17010, Honolulu, Hawaii 96817, Telephone (808) 848-0156, Fax (808) 848-0259

QUOTATION 11-02-033

Prepared by Mark Kagami

To: SOH DOD Hawaii Army National Gu 3949 Diamond Head Road Honolulu, Hawaii 96816	Date: February 9, 2011 Project: Building 46 Kalaeloa Job Type: Replace compressor A Unit to Svc: Carrier Chiller Machine Loc. Building 46
Attn: Sgt. Yale Alama	

We are pleased to submit our quotation for the labor and materials listed below. We call your attention to the terms and conditions under which this quotation is submitted and which are shown on the reverse side of this quotation. These may be modified only by specific written exception on the face of this quotation.

This QUOTE includes labor and materials to replace compressor A on Carrier Chiller at Building 46 Kalaeloa.

<u>Qty.</u>	<u>Units</u>	<u>Job includes:</u>
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1	ea.	Compressor
1	ea.	Nitrogen
1	lot	Labor

All for the sum of tax included.....	\$10,718.00
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OR For work outside of normal hrs., tax included	\$11,635.57
Please initial here _____ for overtime work	

NOTES:

- 1) Quotation based on normal working hours 7:30 am - 4:00 pm Monday through Friday, excluding holidays.
- 2) **After disassembling compressor to inspect, found oil pump worn & metal shavings in oil sump.**
- 3) **There is currently 1 compressor in Honolulu stock, subject to prior sale.**

IF THIS QUOTATION IS ACCEPTABLE, PLEASE SIGN THE ORIGINAL AND ONE COPY AND RETURN FOR FURTHER PROCESSING. AN EXECUTED COPY WILL BE FORWARDED FOR YOUR RECORD. THE FULLY EXECUTED COPY WILL CONSTITUTE THE CONTRACT.

E.P. No. 11-017-D

Page 2

TERMS AND CONDITIONS

This quotation supersedes all previous quotations, and is limited for a period not to exceed 30 days from the date of this quotation.

Orders placed on the basis of this quotation are subject to the following terms and conditions which are an integral part of any order and/or contract resulting from this quotation.

1. **PRICE.** All prices are subject to change without notice and any order calling for future delivery will be billed according to the prices in effect at the time of delivery. All equipment or merchandise in stock are subject to prior sale. If a price is not stated in this quotation, it is agreed that the goods shall be billed at the current market price or at the prevailing market price, whichever is higher. This quotation may be filled at a higher price than last quoted or charged without the Buyer's specific authorization. If the price is stated on the face of quotation and the general market price on goods of like quality as those ordered hereunder declines below that stated, the Buyer shall nonetheless be required to remit the full amount of this quotation. Additional charges including charges for boxing, packing, cartage, or other extras will be added unless specifically agreed to the contrary in writing in advance by Buyer. All goods, equipment, articles, materials and work will be shipped FOB Buyer's address indicated on the first page hereof.
2. **TAXES.** Any tax or other applicable charges imposed upon the sale of the merchandise hereunder, including Gross Excise Taxes, shall be paid by Buyer.
3. **TITLE.** The title to said goods shall not pass to the Buyer until the total price is paid in full. Said goods shall remain personal property in whatever manner it may be affixed or attached to a structure. No loss, injury or destruction of said goods shall release the Buyer from his obligation hereunder. The Buyer shall keep said goods free of all taxes, liens and encumbrances and shall maintain insurance on said goods in an amount equal to the price for said goods.
4. **DELIVERY.** Buyer shall have the right to specify a date for delivery, subject to Seller's written acceptance. Buyer must accept delivery upon tender by Seller if said delivery is within a reasonable time. Buyer agrees that any date of delivery specified on the face of this quotation is only an estimate. Seller shall have no liability to Buyer for, nor shall this agreement be in any way be affected by Seller's inability to deliver any or all goods ordered by said delivery date. If the goods are delivered in portions from time to time, each such delivery is dependent on each other delivery and any tender of delivery by the Seller which conforms to the terms of this quotation, or a failure of any nature with regard to such delivery, shall not constitute a substantial impairment of total value of this quotation, and Seller shall have the right to cure any non-conforming delivery and Buyer shall not be entitled to treat such non-conforming delivery as a breach or default by Seller. The Seller shall have the right to substitute a conforming tender of delivery. Seller shall make each delivery of the goods to Buyer at the place designated on the face of this quotation, or at such other place in Honolulu as Buyer shall hereafter designate in writing to Seller.
5. **DELAYS.** Seller will not be liable for any failure or delay in the performance of the goods or in the delivery or shipment of the goods or for any damages suffered by the Buyer, including but not limited to any consequential damages, by reason of such delay, when such delay is, directly or indirectly, caused by, or in any manner arises from fires, floods, accidents, riots, acts of God, war, government interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, transportation delays, accidents, inability to obtain containers or raw materials or any other cause or causes (whether or not similar in nature to any of these hereinbefore specified) beyond its control.
Any order based upon this quotation is subject to Seller's ability to obtain the necessary raw materials, and all orders or contracts as well as shipments applicable thereto are subject to the Seller's current mill schedules, supplier's ability to provide the necessary material, governmental priorities, and other government regulations, orders, directives, and restrictions that may be in effect from time to time.
6. **WARRANTIES.** Except for the warranty that the goods are made in a workmanlike manner and in accordance with the specifications supplied or agreed to by Buyer and are made or packaged pursuant to Seller's customary manufacturing procedures, SELLER MAKES NO WARRANTY EXPRESS OR IMPLIED; AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE THAT EXCEEDS THE FOREGOING WARRANTY IS HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM ANY AGREEMENT MADE BY ACCEPTANCE ANY ORDER PURSUANT TO THIS QUOTATION. Seller will not be liable for any consequential damages, loss or expense arising in connection with the use of or the inability to use its goods for any purpose whatever. Seller's maximum liability shall not in any case exceed the contract price for the goods claimed to be defective or unsuitable.
Buyer agrees that no promise, affirmation of fact, sample or description made or furnished to him is a part of the basis of the bargain, and descriptions of goods in this quotation or otherwise furnished to Buyer are for the sole purpose of identifying the goods and Seller does not warrant that the goods conform to any models or samples shown Buyer, and Buyer acknowledges that no warranty has arisen through trade, custom or course of dealing with Seller.
7. **TOLERANCES.** Except in the particulars specified by Buyer and expressly agreed to in writing by Seller, all goods shall be produced in accordance with Seller's standard practices. All goods, including that produced to meet an exact specification, shall be subject to tolerances and variations consistent with usages of the trade and regular mill practices concerning: dimension, weight, straightness, section, composition and mechanical properties; normal variations in surface, internal conditions and quality; deviations from tolerances and variations consistent with practical testing and inspection methods; and regular mill practices concerning over and under shipments.
8. **CANCELLATION.** The contract based upon this quotation may be cancelled by the Buyer only upon payment of reasonable charges based upon expenses already incurred and commitments made by Seller.
9. **PAYMENT.** Unless otherwise indicated on the face of this quotation, full payment shall be made by Buyer within 30 days of delivery of goods.
In the event Buyer defaults in payment, a late payment finance charge will be assessed at the rate of 1 1/2% per month on the unpaid balance at an ANNUAL PERCENTAGE RATE OF 18%.
10. **REMEDIES.** If the goods furnished to Buyer fails to conform to this quotation, Seller shall repair or replace such non-conforming goods at the original point of delivery and shall furnish instructions for its disposition. Any transportation charges involved in such disposition shall be for the Seller's account.
Buyer shall notify Seller within ten days of receipt of merchandise of any complaint whatsoever Buyer may have concerning such merchandise.
Buyer's exclusive and sole remedy on account or in respect of the furnishing of goods that does not conform to this quotation shall be to secure replacement goods or repairs, as aforesaid. Seller shall not in any event be liable for the cost of any labor expended on any such goods or for any special, direct, indirect, incidental or consequential damages to anyone by reason of the fact that such goods does not conform to this quotation.
11. **ATTORNEYS' FEES.** If Seller retains an attorney for collection, Buyer agrees to pay reasonable attorneys' fees plus court costs and such additional collection expenses as may be allowed by law. In the event any other action is taken by the Seller for the assertion, protection or defense of any of its rights hereunder, or in the event Seller becomes involved in any dispute or litigation arising out of or because of this quotation, the Buyer agrees to pay, on demand, to the Seller all of its costs, expenses and damages, including reasonable attorney's fees and court costs.
12. **MODIFICATIONS.** This quotation can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents. There are no provisions with respect to this quotation which are not specified herein. An order based upon this quotation may be made only by noting your signature upon a copy hereof and returning the same to Seller within 30 days of receipt. IF BUYER PLACES AN ORDER WITH SELLER BASED ON THIS QUOTATION, THEN A FULLY EXECUTED QUOTATION WILL CONSTITUTE THE ENTIRE CONTRACT BETWEEN BUYER AND SELLER WITH RESPECT TO THE SUBJECT MATTER OF THIS QUOTATION
13. This quotation, any order based upon the quotation and any contract based upon the quotation shall be deemed executed in the City & County of Honolulu, State of Hawaii and shall be governed by and construed in accordance with the laws of the State of Hawaii. Should any lawsuit be commenced with respect to this quotation, Seller consents that such lawsuit shall be in the courts of the State of Hawaii.

I/We understand and accept the foregoing terms and conditions which apply to this transaction.

BUYERS/OWNERS ACCEPTANCE

OAHU AIR CONDITIONING SERVICE, INC.

Approved by _____
Title

Approved by _____
Nancy S. Sato, General Manager

Date _____
Quotation # 11-02-033

Prepared by _____
Mark Kagami

CPO COMMENTS:

On 12/06/10 the delegated authority for emergency procurement approval was rescinded from the department head for all amounts and CPO approval is required. The department was under the impression that emergency procurements required the CPO's prior approval and on 02/10/11 SPO received this request. SPO staff has clarified that the department's procurement officer evaluates the situation and takes appropriate action, such as requesting prior approval via form SPO-02 or immediately procuring the necessary services or materials and requesting after-the-fact approval.

SPO staff contacted Sgt. Yale Alama to obtain additional information and confirmed the building is not occupied daily with the 25 full staff, and it was the monthly maintenance service contractor that reported the building was without air conditioning. The current contract did not include provisions for this situation.

The SPO contacted the department on 02/11/11 that approval was granted, with the understanding that all work should be completed prior to the weekend drill, as the emergency request was based on the immediate need to repair the air conditioning system to accommodate the 200 returning soldiers. On 02/13/11, the department requested the return of this request without action, as vendor was unable to procure the necessary parts for the job.

The department should consider for future solicitations for maintenance/service contracts including other types of services, such as "time and material" (reference HAR 3-122-140) to address these requirements, eliminating the need for an emergency procurement.

It is noted that Sgt. Alama was identified as the responsible personnel for this emergency procurement, has written delegated procurement authority and has stated that he has taken sole source/emergency procurement training in 2002. The 2002 training is prior to the formalized mandatory procurement training workshops and is not an acceptable substitute. Our records on file show that Sgt. Alama attests to having attended the 02/15/11 SPO #110 – *Sole Source/Emergency Procurement* workshop by signing the SPO Webinar Group Attendance Form acknowledging responsibility to knowing the content of the training.